IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.MC.No. 2884 of 2007()

AGAINST THE ORDER DATED 07/08/2007 IN CMP. 955 /2007 IN CC.539/2005 of J.F.C.M.-IV, NEYYATTINKARA

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PETITIONER: ACCUSED:

P. RAVEENDRAN NAIR,
T.NO.3969, PRINTING MACHINE DIVISION, P.P.T.IV
H.M.T. COLONY P.O., KALAMASSERY,ERNAKULAM DISTRICT

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: STATE:

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1. N. SIVADAS, S/O. NARAYANA PILLAI,
PUTHEN VEEDU, PONNUMANGALAM, NEMOM P.O.,
THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2884 of 2007

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Dated this the 28th day of September, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The trial hass already commenced. The matter rests at the stage of S.313 Cr.P.C., submits the learned counsel. The complainant has not chosen to produce the original cheque. Evidently, the complainant takes the risk, if any, on account of the non-production of the original cheque. The petitioner filed an application to direct the complainant to cause production of the original cheque. The application was opposed. It was contended that the cheque has already been produced in a civil proceedings between the parties. There upon, the learned Magistrate proceeded to pass Annex.C order dismissing the petition to direct the complainant to produce the document. Aggrieved by the said order the petitioner has come before this Court to invoke the powers under Section 482 Cr.P.C. to set aside the order.

2. It is for the complainant to prove his case beyond doubt and to the satisfaction of the court. The complainant does not want

the original cheque to be produced. When asked to produce the said cheque, he submitted that the cheque is not available with him and he does not want to take any steps to get the cheque produced before court. I would have expected the petitioner to take advantage of the situation and urge, if that be possible, that adverse inference must be drawn against the complainant. If, on the contrary, the petitioner wants the cheque to be produced to prove any part of his case, it is certainly for the petitioner to take necessary steps to get the cheque produced before the Magistrate in accordance with law. Having not done the same, I find absolutely no merit in the prayer to compel the complainant to apply for return of the cheque from the civil court and produce the same before the criminal court. I am of the opinion that powers under Section 482 Cr.P.C. cannot and need not be invoked against the impugned order.

3. I do further note that the impugned order is only an interlocutory order. Law frowns upon attempts to challenge interlocutory orders during the pendency of the proceedings. This policy of law is clearly reflected in the embargo against revisional challenge against interlocutory orders under Section 397(2) Cr.P.C. I am certainly of the opinion that the extra

ordinary inherent jurisdiction cannot and need not be invoked against the impugned interlocutory order, the challenge against which is proscribed under Section 397(2) Cr.P.C.

4. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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